

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

AARON WARD, individually and as)
surviving son of JUNE TURMAN, Deceased,)
)
Plaintiff,)
)
v.)
)
SENTINEL SECURITY LIFE INSURANCE)
COMPANY; PATRICK LODER,)
)
Defendants.)

Case No. CIV-14-1213-R

NOTICE OF REMOVAL

1. Sentinel Security Life Insurance Company is Defendant in a civil action brought against it in the District Court of Pottawatomie County, State of Oklahoma, and titled *Aaron Ward, individually and as surviving son of June Turman, Deceased, Plaintiff v. Sentinel Security Life Insurance Company and Patrick Loder, Defendants*, Case No. CJ-2014-361.

2. At the time of filing this action and at the present time, Plaintiff was and is presently a resident of the State of Oklahoma. At the time of filing this action and at the present time, Defendant Sentinel Security Life Insurance Company was and is a corporation duly organized and existing under the laws of the State of Utah and no other state, with its principal place of business in Salt Lake City, Salt Lake County, State of Utah; it is not a citizen of Oklahoma.

3. The Petition filed by Plaintiff also attempts to state a cause of action against Patrick Loder, a resident of the State of Oklahoma.

4. Patrick Loder was fraudulently joined in the action below in order to prevent removal and his residence should be ignored in determining the existence of diversity jurisdiction under 28 U.S.C. § 1332. *See Dutcher v. Matheson*, 733 F.3d 980 (10th Cir. 2013). Plaintiff is unable to establish a cause of action against Patrick Loder.

5. The Petition asserts two claims; (i) breach of the duty of good faith and fair dealing; and (ii) fraud. Plaintiff alleges that Patrick Loder was the agent who took the application of the decedent, June Turman. To the extent the Petition attempts to state a claim against Patrick Loder for breach of the duty of good faith and fair dealing, Oklahoma does not recognize such a claim against someone who is not a party to the insurance contract. *See United Adjustment v. Professional Insurors*, 2013 OK CIV APP 67, ¶21, 307 P.3d 400, 405. To the extent the Petition attempts to assert a claim of fraud against Patrick Loder on behalf of Plaintiff's deceased mother, June Turman, the Petition fails to allege any basis upon which to conclude that Plaintiff has standing to pursue such a claim. The allegations of fraud in the Petition focus upon purported misrepresentations to Plaintiff's deceased mother. *See* Petition, ¶22. Based upon the face of the Petition, it appears Plaintiff is attempting to assert this claim individually as the decedent's surviving son. As a result, Plaintiff's claims against the non-diverse defendant, Patrick Loder, fail to state a claim upon which relief can be granted.

6. There is more than \$75,000.00 at issue on the face of Plaintiff's allegations. Paragraph 33 of the Petition alleges an amount in controversy "in excess of \$75,000."

7. This is the kind of action in which the United States District Courts have original jurisdiction because of diversity of citizenship and sufficiency of amount in controversy.

8. The aforementioned action was commenced by service of Summons upon Defendant through the Insurance Commissioner of the State of Oklahoma on October 6, 2014, and this Notice of Removal is, therefore, timely filed under the provisions of 28 U.S.C. §§ 1441-1446.

9. Copies of all process, pleadings and orders served upon Defendant Sentinel Security Life Insurance Company in the aforementioned state action are attached hereto, marked Exhibit “1,” and a copy of the docket sheet in such action is attached hereto, marked Exhibit “2”. There are no motions pending in the state action.

Respectfully submitted,

/s/ Mitchell D. Blackburn

Mitchell D. Blackburn, OBA #12217

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ATTORNEYS FOR DEFENDANT
SENTINEL SECURITY LIFE INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I certify that on the same date this Notice of Removal was filed in the United States District Court for the Western District of Oklahoma, a true and correct copy of said Notice of Removal was served upon the above-named Plaintiff, by mailing said copy to Plaintiff's counsel:

John L. Branum
Macy F. Jensen
Branum Law Firm, PLLC
7701 S. Western Ave., Suite 205
Oklahoma City, OK 73139
Attorneys for Plaintiff

And further that a copy of said Notice of Removal will be hand-delivered to Reta Head, Court Clerk of Pottawatomie County, Pottawatomie County Courthouse, Shawnee, Oklahoma, for filing on the 6th day of November, 2014.

/s/ Mitchell D. Blackburn

Mitchell D. Blackburn